

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

ORDER

10-CR-59 (NGG)

-against-

OSCAR GASTELUM,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

On April 22, 2010, Magistrate Judge Reyes issued an order setting conditions of release for Defendant Oscar Gastelum. The Government seeks to have this order revoked. (Docket Entry #25.) After a hearing and oral argument held today, the court grants the Government's application and revokes the order setting conditions of release for the reasons set forth below.

As Defendant conceded at oral argument, there is a rebuttable presumption in this case that "no condition or combination of conditions will reasonably assure the appearance of the person as required." 18 U.S.C § 3142(e). Defendant has failed to rebut this presumption. Defendant is charged with narcotics offenses which carry a statutory minimum of ten years imprisonment, and the Government has demonstrated that the evidence against him is strong: the Government has multiple recordings of Defendant arranging a large drug transaction; Defendant has strong ties to Mexico, but has no connection to New York, and his only connection to Arizona is his immediate family – his wife, whose immigration status is disputed, and his three young children; none of the proposed sureties is a close relative of Defendant, and the court is not persuaded that the potential loss to Defendant's friends and distant relatives will be enough

to prevent him from fleeing to Mexico. These facts, even standing alone, tend to suggest that there is a great risk of flight.

Defendant's criminal history only heightens the court's concern. The evidence presented shows that Defendant has a history of using false names and social security numbers, that he has failed to appear in court on numerous occasions, and that he currently has an outstanding warrant in Arizona for failure to appear. The penalties facing Defendant on these occasions were far less severe than those he now faces, and yet he did not appear. The most logical conclusion is that, faced with such serious charges, strong evidence, and a long potential sentence of ten years to life, Defendant will more likely than not fail to appear in this case, no matter what conditions are put upon his release. Indeed, under these circumstances, the court would reach the same conclusion even if the rebuttable presumption did not apply.

Accordingly, the order setting release conditions is revoked. The court instead orders Defendant's detention pending trial. As required by 18 U.S.C. § 3142(i), the court directs that Defendant be confined in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal, that Defendant be afforded reasonable opportunity for private consultation with counsel, and that Defendant be delivered to a United States marshal when necessary for an appearance in connection with a court proceeding.

SO ORDERED.

Dated: Brooklyn, New York
April 27, 2010

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge